

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 05-440-10
DANTE TUCKER	:	

SURRICK, J.

APRIL 27, 2011

MEMORANDUM

Presently before the Court is Defendant Dante Tucker's Motion for the Inspect [sic] of All Grand Jury Minutes and Transcripts. (ECF No. 1405.) For the following reasons, Defendant's Motion is denied.

I. BACKGROUND

On February 21, 2007, a federal grand jury returned a Fifth Superseding Indictment charging Defendant Dante Tucker and 21 others with being members of a multi-state drug distribution conspiracy known as the Alton Coles Cocaine Gang. The Indictment contained 195 Counts. The defendants were each charged in several counts. Ultimately there were two trials, one of which lasted for eight weeks. At the conclusion of the trials nine of Dante Tucker's co-defendants were found guilty of crimes related to the drug conspiracy. Six of the defendants entered into cooperation plea agreements with the Government and received downward departures at sentencing. Five defendants entered non-cooperation guilty pleas. One defendant was found not guilty. Dante Tucker's case is now scheduled for trial.¹ Tucker is proceeding pro

¹ The delay in getting this case to trial is due to the fact that Tucker has been committed on several occasions for competency evaluations pursuant to 18 U.S.C. §§ 4241 *et seq.*, *see United States v. Dante Tucker*, No. 05-440-10, 2010 WL 3516852 (E.D. Pa. Sept. 3, 2010), and

se and standby counsel has been appointed to assist him.

Defendant filed the instant Motion seeking to dismiss the Fifth Superseding Indictment due to “Grand Jury abuse,” or in the alternative, to permit Defendant to inspect the list of names of grand jurors who voted on the indictment, to compel the Government to disclose the names of all unauthorized persons who were present during the Grand Jury proceedings and to affirm or deny the use of summaries of witness testimony, and to compel production of grand jury transcripts. Defendant relies on Federal Rules of Criminal Procedure 6 and 12(b)(2) and 28 U.S.C. § 1867 as support for his Motion. (Def.’s Mot. 1, ECF No. 1405.) The Government opposes Defendant’s Motion. (*See* Govt.’s Resp. 1-2, ECF No. 1412.)

II. DISCUSSION

A. Defendant’s Motion to Dismiss the Indictment

Federal Rule of Criminal Procedure 6(b)(2) provides that a party may move to dismiss an indictment “based on an objection to the grand jury or on an individual juror’s lack of legal qualification.” The motion to dismiss is governed by 28 U.S.C. § 1867. *Id.* Section 1867(a) states that:

before the voir dire examination begins, or within seven days after the defendant discovered or could have discovered, by the exercise of diligence, the grounds therefor, whichever is earlier, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of substantial failure to comply with the provisions of this title in selecting the grand or petit jury.

In support of a motion filed under § 1867(a), the movant must submit “a sworn statement of facts which, if true, would constitute a substantial failure to comply with the provisions of this title.”

because Tucker is now representing himself and has requested time to review the voluminous discovery in preparation for trial.

Id. § 1867(d). “Courts have uniformly required strict compliance with these procedures.” *United States v. Calabrese*, 942 F.2d 218, 222 (3d Cir. 1991).

Defendant has failed to submit a sworn statement of facts that would establish a substantial failure to comply with the procedures for seeking an indictment from the grand jury. Indeed, Defendant’s Motion provides no facts to support a finding that the appropriate procedures were not followed regarding the grand jury.² Defendant’s Motion to dismiss the Fifth Superseding Indictment is denied.

B. Defendant’s Request to Inspect Grand Jury Minutes and Transcripts

Defendant requests production of information regarding the grand jury that voted to indict him, including the list of names of qualified grand jurors who voted on the indictment, the identities of all unauthorized people who were present while the grand jury was in session, whether the Government presented the grand jury with summaries of witness testimony, the records naming the individuals in the master wheel, and transcripts of evidence adduced before the grand jury. (Def.’s Mot. 1.)

“[T]he standard practice since approximately the 17th century has been to conduct grand jury proceedings in secret.” *Giles v. California*, 554 U.S. 353, 371 (2008); *see also United States v. R. Enters., Inc.*, 498 U.S. 292, 299 (1991) (noting that “grand jury proceedings are subject to strict secrecy requirements”). Federal Rule of Criminal Procedure 6(e) contains various exceptions to grand-jury secrecy, however. Rule 6(e)(3)(E)(ii), which Defendant cites in his

² Since Defendant does not provide a factual basis to support what appears to be a contention of procedural irregularities regarding the grand jury, we are unable to determine whether Defendant’s Motion was filed “within seven days after [he] discovered or could have discovered, by the exercise of diligence, the grounds” for the Motion. *See* 28 U.S.C. § 1867(a).

Motion, gives courts the power to authorize disclosure of a grand jury matter “at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury.” (*See* Def.’s Mot. 1.) The Third Circuit has emphasized that to obtain grand jury materials, a party must show “a particularized need for that information which outweighs the public interest in secrecy.” *United States v. McDowell*, 888 F.2d 285, 289 (3d Cir. 1989).

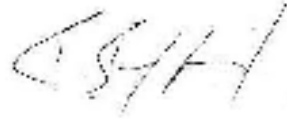
Defendant has failed to show a particularized need for the information he seeks. His Motion fails to show that any ground may exist to dismiss the indictment due to irregularities in the grand jury proceedings. *See* Fed. R. Crim. P. 6(e)(3)(E)(ii). Defendant’s Motion merely suggests that permitting him access to grand jury materials would show whether there were defects in the grand jury proceedings. (*See, e.g.*, Def.’s Mot. 2 (“The attendance records of the grand jurors will enable this court to determine whether the indict [sic] in this case at bar was returned by an independent and informed grand jury or by a grand jury which improperly relied on the government’s recommendation [sic] to indict without making an independent review of the evidence presented.”); *id.* at 4 (“The disclosure of matters occurring [sic] before the grand jury in the nature of testimony presented and evidence exhibited will reveal grounds for a motion to dismiss.”).) Suggestions of impropriety and speculation about what the grand jury minutes may reveal are insufficient to establish a particularized need for disclosure. *See United States v. Miner*, 299 F. App’x 110, 111-112 (3d Cir. 2008) (per curiam) (non-precedential) (holding that defendant’s “vague allegation” that the Government had committed “fraud before the grand jury” did not demonstrate particularized need for disclosure). Defendant’s Motion therefore fails.

III. CONCLUSION

For all of the reasons set forth above, Defendant's Motion is denied.

An appropriate Order follows.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "R. Surrick", is written over a horizontal line.

R. BARCLAY SURRICK, J.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

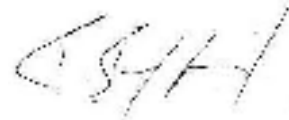
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ORDER

AND NOW, this 27th day of April, 2011, upon consideration of Motion for the Inspect [sic] of All Grand Jury Minutes and Transcripts (ECF No. 1405), it is **ORDERED** that the Motion is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:



R. BARCLAY SURRECK, J.